

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re: : Chapter 11
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CORT & MEDAS ASSOCIATES, LLC, : Case No.: 19-41313 (CEC)
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Debtor. :
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**APPELLANT 1414 UTICA AVENUE LENDER
LLC'S STATEMENT OF ISSUES TO BE PRESENTED AND
DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Appellant 1414 Utica Avenue Lender LLC (“Appellant”), by and through its undersigned counsel, hereby respectfully submits, pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure and Rule 8009-1 of the Local Bankruptcy Rules for the Eastern District of New York, this statement of issues to be presented and designation of items to be included in the record on appeal with respect to its appeal of this Court’s *Order with Respect to the Claims of 1414 Utica Avenue Lender LLC and Empire State Certified Development Corporation* (the “Appealed Order”) [ECF No. 146] before the United States District Court for the Eastern District of New York (the “District Court”) at Case No. 1-20-03971-BMC.

STATEMENT OF ISSUES ON APPEAL

1. Whether the Bankruptcy Court erred in ruling that, notwithstanding entry of a final, non-appealable judgment of foreclosure and sale (the “Foreclosure Judgment”) obtained by Appellant in a New York state court foreclosure action, the portion of 1414 Lender’s secured claim relating to default charges is subordinated to the claim of appellee Empire State Certified Development Corporation (“Appellee”) in the bankruptcy case of Cort & Medas Associates LLC (the “Debtor”).

2. Whether the Bankruptcy Court overlooked language contained in the Foreclosure Judgment that precludes Appellee from relitigating in the Bankruptcy Court the priority of its mortgage lien against the Debtor's real property.

3. Whether the Bankruptcy Court erred in holding that the Foreclosure Judgment did not preclude Appellee from asserting that Appellee's lien was senior to Appellant's lien to the extent of Appellant's claim for default charges pursuant to the *Rooker-Feldman* doctrine.

4. Whether the Bankruptcy Court erred in holding that the Foreclosure Judgment did not preclude Appellee from asserting that Appellee's lien was senior to Appellant's lien to the extent of Appellant's claim for default charges by failing to consider and/or properly apply the doctrine of *res judicata*.

5. Did the Bankruptcy Court err by entering the Appealed Order?

DESIGNATION OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL

Appellant designates the following items for inclusion in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and referenced within such items.

Docket No.	Docket Entry Date	Description
1	03/06/2019	Chapter 11 Voluntary Petition for Non-Individuals
3	03/07/2019	Affidavit Re: Local Rule Rule 1007-2 Declaration
13	03/18/2019	Schedule(s), Statement(s) and Affidavit Pursuant to E.D.N.Y. LBR 1007-1(b) Schedule A/B, Schedule C, Schedule D, Schedule E/F, Schedule G, Schedule H
14	03/18/2019	Summary of Assets and Liabilities for Non-Individuals (Form 206Sum) for Non-Individuals

15	03/18/2019	Declaration Under Penalty of Perjury for Non-Individual Debtors (Form 202)
16	03/18/2019	Chapter 11 or Chapter 9 Cases Non-Individual: List of Creditors Who Have 20 Largest Unsecured Claims Against You and Are Not Insiders
17	03/18/2019	Statement of Financial Affairs for Non-Individuals (Form 207)
18	03/18/2019	Affidavit Re: List of Equity Holders
19	03/18/2019	Statement of Compensation Pursuant to Rule 2030
29	04/15/2019	Order Setting Last Day To File Proofs of Claim
37	06/03/2019	Chapter 11 Plan dated June 3, 2019
38	06/03/2019	Disclosure Statement
45	07/26/2019	Interim Stipulation and Order by and between Attorneys for 1414 Utica Street Lender, LLC and Attorneys for Cort & Medas Associates, LLC Pursuant to 11 U.S.C. §§ 361 & 363 and Fed. R. Bankr. P. 4001 Providing for the Debtor's Use of Cash Collateral and Other Relief
46	08/04/2019	Transcript & Notice regarding the hearing held on 05/29/19
48	08/12/2019	Motion For Approval of Disclosure Statement
50	09/11/2019	Objection to Debtor's Motion For Approval of Disclosure Statement and Related Relief
70	12/03/2019	First Amended Chapter 11 Plan
71	12/03/2019	First Amended Disclosure Statement
84	12/19/2019	Scheduling Order
85	12/20/2019	Response /Supplemental Brief
90	01/03/2020	First Amended Chapter 11 Plan

91	01/03/2020	First Amended Disclosure Statement , As Modified
92	01/08/2020	Response Brief Regarding Priority of Default Rate Interest
99	02/28/2020	Transcript & Notice regarding the hearing held on 02/19/20
111	05/12/2020	Motion to Authorize/Direct Application for entry of an Order Determining the Priority, Nature and Amount of its Claim and Priority, Nature and Amount/Objection to the Claim of Subordinate Mortgagee, Empire State Certified Development Corp.
112	05/12/2020	Memorandum of Law in Support
116	06/17/2020	Response Brief to Application of 1414 Utica Avenue Lender LLC to Determine Priority, Nature and Amount of Claims
121	06/24/2020	Reply to the Response of Empire State Development Corporation and in further support of its Motion for Entry of an Order
125	07/02/2020	Transcript & Notice regarding the hearing held on 06/24/20
127	07/08/2020	Motion to Sell Property of the Estate Free and Clear of Liens under 11 U.S.C 363(f) Sales Procedures Motion With Respect to real properties known as and located at 1376 and 1414 Utica Avenue, Brooklyn, New York 11203
128	07/08/2020	Motion to Authorize/Direct Motion For Approval of Disclosure Statement
129	07/08/2020	Second Amended Chapter 11 Plan
130	07/08/2020	Second Amended Disclosure Statement
132	07/16/2020	Second Amended Disclosure Statement, As Modified
136	07/29/2020	Transcript & Notice regarding the hearing held on 06/24/2020
137	07/29/2020	Omnibus Objection
139	07/30/2020	Response Reservation of Rights with Respect to Sale Motion

142	08/04/2020	Response to 1414 Lender's Omnibus Objection
146	08/10/2020	Order Denying Motion To Authorize/Direct Application for entry of an Order Determining the Priority, Nature and Amount of its Claim and Priority, Nature and Amount/Objection to the Claim of Subordinate Mortgagee, Empire State Certified Development Corp.
147	08/10/2020	Amended Scheduling Order
148	08/13/2020	Second Amended Chapter 11 Plan, As Modified
153	08/20/2020	Second Amended Disclosure Statement , As Modified
156	08/21/2020	Order Approving (I) Disclosure Statement, as modified (II) Form and Manner of Notices (III) Form of Ballots and (IV) Solicitation Materials and Solicitation Procedures and Setting Hearing on Confirmation
157	08/24/2020	Notice of Appeal to District Court
158	08/25/2020	Order Authorizing and Approving an Auction Sale for the Real Properties known as and located at 1376 and 1414 Utica Avenue, Brooklyn, New York 11203
162	08/26/2020	Transmittal of Notice of Appeal to District Court
163	08/26/2020	Notice of Docketing Record on Appeal to District Court

Dated: New York, New York
 September 8, 2020

RUBIN LLC

By: /s/ Paul A. Rubin
 Paul A. Rubin

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